

Message Text

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ACTION IO-13

INFO OCT-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 ISO-00
EB-08 AID-05 COME-00 LAB-04 SIL-01 TRSE-00 HUD-02
HEW-06 AGRE-00 L-03 SSO-00 /092 W
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UNCLAS VIENNA 2210

E.O. 11652: N/A

TAGS: UNIDO, EIND, OCON, PORC

SUBJECT: UNIDO CONSTITUTION, IGC-V, ARTICLES 22 (ENTRY INTO FORCE)
AND 23 (TRANSITIONAL ARRANGEMENTS).

1. SUMMARY: LEGAL DRAFTING GROUP HAS APPROVED ACCEPTABLE
ARTICLE ON ENTRY INTO FORCE AND TRANSITIONAL ARRANGEMENTS.

2. LEGAL DRAFTING GROUP, IN EVENING OF MARCH 18, APPROVED
AND SENT TO CONTACT GROUP FOLLOWING TEXTS OF ARTICLES 22
(ENTRY INTO FORCE) AND 23 (TRANSITIONAL ARRANGEMENTS):

QTE ARTICEL 22. ENTRY INTO FORCE. 1. THIS CONSTITUTION
SHALL ENTER INTO FORCE WHEN AT LEAST EIGHTY STATES THAT
HAD DEPOSITED INSTRUMENTS OF RATIFICATION, ACCEPTANCE OR
APPROVAL NOTIFY THE DEPOSITARY THAT THEY HAVE AGREED
AFTER CONSULTATION AMONG THEMSELVES THAT THIS CONSTITUTION
SHALL ENTER INTO FORCE.

2. THIS CONSTITUTION SHALL ENTER INTO FORCE:

(A) FOR STATES THAT PARTICIPATED IN THE NOTIFICATION
REFERRED TO IN PARA 1 OF THE DATE OF THE ENTRY INTO
FORCE OF THIS CONSTITUTION;

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(B) FOR STATES THAT HAD DEPOSITED INSTRUMENTS OF
RATIFICATION, ACCEPTANCE OR APPROVAL BEFORE THE
ENTRY INTO FORCE OF THIS CONSTITUTION BUT DID NOT
PARTICIPATE IN THE NOTIFICATION REFERRED TO IN
PARAGARPH 1, ON SUCH LATER DATE ON WHICH THEY NOTIFY
THE DEPOSITARY THAT THIS CONSTITUTION SHALL ENTER
INTO FORCE FOR THEM;

(C) FOR STATES THAT DEPOSIT INSTRUMENTS OF RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION SUBSEQUENT TO THE ENTRY INTO FORCE OF THIS CONSTITUTION, ON THE DATE OF SUCH DEPOSIT.

ARTICLE 23. TRANSITIONAL ARRANGEMENTS. 1. THE DEPOSITORY SHALL CONVENE THE FIRST SESSION OF THE CONFERENCE TO BE HELD WITHIN THREE MONTHS FOLLOWING THE ENTRY INTO FORCE OF THIS CONSTITUTION.

2. THE RULES AND REGULATIONS GOVERNING THE ORGANIZATION ESTABLISHED BY UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 2152 (XXI) SHALL GOVERN THE ORGANIZATION AND ITS ORGANS UNTIL SUCH TIME AS THE LATTER MAY ADOPT NEW PROVISIONS. END QTE

3. COMMENT: (A) ARTICLE 22 IS SECRETARIAT DRAFT. GP-B HAD ORIGINALLY PROPOSED THAT CONSTITUTION ENTER INTO FORCE WHEN AT LEAST 80 STATES, COMPRISING AT LEAST 60 PERCENT OF UN SCALE OF ASSES-

- MENTS, HAD RATIFIED. GROUP 77 OPPOSED THIS PROPOSITION STRONGLY ON GROUNDS THAT THIS WAS EFFORT OF MAJOR CONTRIBUTORS TO VETO COMING INTO FORCE OF CONSTITUTION.

(B) IT IS AGREED THAT REFERENCE TO "CONSULTATIONS" IN ARTICLE 22(1) COULD, BUT NEED NOT NECESSARILY, INCLUDE A FORMAL MEETING OF THE RATIFYING STATES. THIS COULD BE DONE AT A SESSION OF THE UNGA. THE REPORT OF THE CHAIRMAN OF THE LEGAL DRAFTING GROUP WILL STATE THIS.

(C) GP-77 SOUGHT TO DELETE ARTICLE 22(2)(A) AND (B) ON GROUNDS THAT THEY WERE REDUNDANT. WE RESISTED THIS ON UNCLASSIFIED

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GROUNDS THAT A STATE WHICH HAD RATIFIED MIGHT STILL DISAGREE WITH THE DETERMINATION OF THE OTHER RATIFYING STATES THAT THE ORGANIZATION WAS ECONOMICALLY VIABLE, AND WOULD NOT BE WILLING FOR THE CONSTITUTION TO ENTER INTO FORCE WITH RESPECT TO IT. WE INDICATED THAT WE HELD THIS VIEW STRONGLY. THE DELETION PROPOSAL WAS NOT PRESSED.

(D) IF U.S. RATIFIED IN COMPANY OF STATES BEARING A RELATIVELY SMALL PORTION OF THE EXISTING UNIDO BUDGET, THE US INITIAL ASSESSMENT IN UNIDO IN DOLLAR TERMS MIGHT EXCEED WHAT IT OTHERWISE WOULD BE WITH A LARGER MEMBERSHIP, BASED ON THE UN SCAL OF 25 PERCENT. IN ANY EVENT, THE US NEED NOT NOTIFY UNDER ARTICLE 22(2)(B), OR ACCEDE UNDER ARTICLE 22(2)(C), UNTIL IT HAS DETERMINED WHAT FINANCIAL OBLIGATION IT IS PREPARED TO ACCEPT IN ORDER TO LAUNCH THE NEW ORGANIZATION.

(E) ARTICLE 23, IN THE ORIGINAL SECRETARIAT DRAFT, HAD COMNTEMPLATED A SEPARATE PREPARATORY COMMISSION. GP-B PROPOSAL WAS THAT THE EXISTING IDB ASSUME THE FUNCTIONS OF THE PREPARATORY COMMISSION ON THE GROUNDS THAT: (1) THERE IS NOT MUCH TO DO E.G., THE RULES OF PROCEDURE OF THE BOARD

WILL UNDOUBTEDLY BE BASED ON THE EXISTING RULES. (W) IT IS
PREFERABLE THAT IN-HOUSE PEOPLE. GP-77 STRONGLY OBJECTED ON GROUNDS T
HAT
IDB MIGHT NOT BE COMPOSED ENTIRELY OF RATIFYING STATES, AND
THAT USING THE IDB AS THE PREPARATORY COMMISSION MIGHT GIVE
NON-RATIFYING STATES A ROLE IN THE ORGANIZING OF THE NEW
UNIDO. CURRENT FORMULATION ESSENTIALLY GIVES THIS FIRST
CONFERENCE THE ROLE OF THE PREPARATORY COMMISSION. THIS IS
PROBABLY THE BEST WE CAN DO. STIBRAVY

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